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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 2000/3

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Executive summary

The report begins with a description of the Special Rapporteur's activities during the year 2000 and the correspondence sent and received. Reference is made to the communications received from the Governments of Antigua and Barbuda, Cuba, Georgia, Madagascar, Pakistan and Venezuela in response to the Special Rapporteur's general request for information and cooperation on the part of non-governmental organizations (NGOs). In following up his official mission to Cuba in September 1999, the Special Rapporteur discusses the communications sent to the Governments of El Salvador, Guatemala, Panama and the United States of America as well as the replies received.

The report describes the development of mercenary activities in Africa from the time that mercenaries were used by the racist apartheid regime in South Africa up to and including recent armed conflicts in the continent and refers to the situation in Angola, the Democratic Republic of the Congo, Guinea-Bissau, the Republic of the Congo and Sierra Leone.

The Special Rapporteur then examines the differences between traditional and new forms of mercenary activities, the relationship between terrorism and mercenary activities, the problems raised in connection with respect for human rights and international humanitarian law by private security and military assistance companies operating internationally and the limits and shortcomings of the legal definition of mercenary activities. He also discusses the present position as regards accessions to and ratifications of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in 1989.

Introduction

1. At its fifth-sixth session, the Commission on Human Rights adopted resolution 2000/3 of 7 April 2000 in which, among other things, it decided to consider at its fifty-seventh session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Commission requested the Special Rapporteur to consult States, intergovernmental and non-governmental organizations in the implementation of the current resolution and to report, with specific recommendations, his findings on the use of mercenaries to undermine the right to self-determination to the Commission at its fifty-seventh session.

2. The Commission reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. It recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market. Furthermore, it urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State, or dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right to self-determination of peoples.

3. The Commission invited States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur, urged all States to cooperate fully with the Special Rapporteur in the fulfilment of his mandate and requested the United Nations High Commissioner for Human Rights to provide the Special Rapporteur with all the necessary assistance and support for the fulfilment of his mandate. It reiterated its request to the Office of the United Nations High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of mercenary activities on the right of peoples to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries.

4. The Commission reiterated the importance of a clearer legal definition of mercenaries that would make for more efficient prevention and punishment of mercenary activities and decided to convene a workshop on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Commission also called upon all States that had not yet done so to consider taking the necessary action to sign or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

5. In this regard, the Special Rapporteur wishes to report that he is continuing to analyse traditional and new forms of mercenary activities with a view to submitting proposals to the Commission on a clearer legal definition of mercenaries. He would add that the expert seminar convened by the Commission is being organized as this report is being drawn up, and is

scheduled to meet from 29 January to 2 February 2001. This seminar, as well as another to be held towards the end of the year, will examine international legislation and the current situation in this area in an effort to deal with new types of mercenary activities.

6. On 26 October 2000 the Third Committee of the General Assembly adopted resolution 55/86 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". In this resolution, the General Assembly requested the Special Rapporteur to report his findings on the use of mercenaries to undermine the right of peoples to self-determination, with specific recommendations, at its fifty-sixth session. The General Assembly, among other things, welcomed the adoption by some States of national legislation that restricted the recruitment, assembly, financing, training and transit of mercenaries, as well as the cooperation extended by those countries that had received visits from the Special Rapporteur.

7. In the light of the above, and pursuant to the provisions of resolution 2000/3, the Special Rapporteur has the honour to submit this report to the Commission on Human Rights for consideration at its fifty-seventh session.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

8. The Special Rapporteur submitted his previous report (E/CN.4/2000/14 and Corr.1) to the Commission on Human Rights on 22 March 2000. While in Geneva, the Special Rapporteur held consultations with representatives of various States and met with members of NGOs. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

9. The Special Rapporteur returned to Geneva on three occasions, from 5 to 9 June, from 21 to 22 August and from 4 to 7 December 2000, to hold various consultations, take part in the seventh meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights and to draft his reports to the General Assembly and the Commission. During his stay in Geneva, the Special Rapporteur held consultations on the preparation and publication of the pamphlet on the negative impact of the use of mercenaries on the exercise of the right of peoples to self-determination which the Office of the High Commissioner had been asked to prepare and which it should publish in the near future. He also held consultations on the preparation of the expert seminars that the Office had scheduled for 2001 on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

10. The Special Rapporteur submitted his report (A/55/334) to the General Assembly on 18 October 2000. During his stay in New York he met with various permanent representatives to the United Nations and members of NGOs having their head offices in the United States.

11. The Special Rapporteur was obliged to postpone to 2001 his visit to the Centre for International Crime Prevention (CICP) of the Office for Drug Control and Crime Prevention (ODCCP) in Vienna. At that time the Special Rapporteur hopes to be able to discuss with CICP officials possible forms of cooperation under his mandate and receive information on the United Nations Convention against Transnational Organized Crime as well as on CICP's activities to combat transnational organized crime, illicit traffic in persons and in arms and corruption.

B. Correspondence

12. Pursuant to General Assembly resolution 54/151 and Commission resolution 2000/3, the Special Rapporteur sent a communication on 16 June 2000 to all States Members of the United Nations, requesting: (a) information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries); (b) information on the possible participation by nationals of their country as mercenaries in the commission of acts against the sovereignty of other States or the self-determination of other peoples; (c) information on the existence of mercenary activities organized in the territory of another State against the requested State; (d) information on the possible participation of mercenaries in the commission of internationally wrongful acts, such as terrorist attacks, traffic in persons, drugs or weapons and formation of and support for death squads and paramilitary organizations; (e) information on domestic legislation in force and on treaties outlawing mercenary activities to which the State is a party; (f) suggestions by their Governments for enhancing the international treatment of the topic of outlawing mercenary activities; and, lastly, (g) information and views on private security service and military advice and training companies.

13. The replies to the questionnaire received from the Governments of Antigua and Barbuda, Cuba, Georgia and Pakistan have been included in the Special Rapporteur's report to the General Assembly (A/55/334, paras. 13-15 and 18) and contain particularly useful information and observations.

14. Subsequently, in a note verbale dated 27 October 2000, the Permanent Mission of Venezuela to the Office of the United Nations in Geneva transmitted the following reply to the questionnaire sent by the Special Rapporteur:

> "(a) We have no knowledge about any past or present mercenary activities in the country; (b) nothing is known about any participation by Venezuelans in the commission of acts against the sovereignty of other States; (c) nothing is known about any participation of mercenaries in committing wrongful acts in the country. In recent years, however abduction has become a source of concern, since subversive Colombian organizations as well as drug trafficking organizations are managing to establish contacts with underground groups in the country with a view to planning and arranging abductions as well as the theft of aircraft for transfer to Colombia to engage in drug trafficking operations."

15. The note verbale continues as follows:

> "(d) Venezuela is not a party to the International Convention on the question; (e) no information is available about the existence of companies that offer their services to Governments with a view to participating in international armed conflicts with the help of military professionals in order to improve the military efficiency of Government forces."

It goes on to say, among other things, that article 1, paragraph 2, of the most recent Constitution of the Bolivarian Republic of Venezuela, published in Official Gazette No. 36.860 of 30 December 1999 states that "Independence, liberty, sovereignty, immunity, territorial integrity and national self-determination are irrevocable rights of the nation", and it adds that this reference to national self-determination as an irrevocable right of the nation implies the right of the sovereign people to determine its own political organization and its independence.

16. Venezuela's Permanent Mission also states that, according to article 152 of the Constitution of the Bolivarian Republic of Venezuela, the country's international relations "are governed by the principles of independence, equality between States, self-determination and non-intervention in internal affairs, the peaceful solution of international disputes, cooperation, respect for human rights and solidarity between peoples in the struggle for their emancipation and the welfare of humanity".

17. The Permanent Mission of the Republic of Madagascar to the Office of the United Nations in Geneva, in a note verbale dated 29 November 2000, stated the following:

> "(a) The Ministry of the Armed Forces has no recent information about the recruitment, financing, training and use of mercenaries at the international level; (b) no person of Malagasy nationality has so far been declared to be a mercenary or a participant in mercenary activities in other States; (c) the Ministry of the Armed Forces has received no information about mercenary activities likely to affect national sovereignty or the exercise of human rights; (d) the statute governing Malagasy servicemen prohibits members of the Malagasy armed forces from leaving the national territory without the express authorization of superior authorities."

18. The Special Rapporteur also wrote to the Governments of the Islamic State of Afghanistan and the Russian Federation in letters dated 8 June 2000, requesting official information on the presence of foreign combatants and possibly of mercenaries in Afghan territory controlled by the Taliban and in Chechnya respectively. No response has been received to these communications. Non-government sources continue to inform the Special Rapporteur about the existence in Afghan territory of centres for training in the use of arms and explosives which allegedly cater to foreigners recruited mainly in certain Islamic countries. After receiving training, these persons are reportedly sent to fight in the north of Afghanistan.

19. The Special Rapporteur acknowledges with thanks the communications he received from the Governments of Madagascar and Venezuela and is grateful to the Governments which sent the communications that have been included in his report to the General Assembly. He also expresses appreciation for the cooperation of the NGOs Amnesty International (United Kingdom Branch), Human Rights Watch and International Alert. He is also grateful for the

communications received from the Bahrain Human Rights Organization, Copenhagen; the Centre for Conflict Resolution, Capetown; the International Service for Human Rights, Geneva; the Muttahida Quami Movement (MQM), London; the Royal Institute of International Affairs (Chatham House), London, and the Organization for Defending Victims of Violence, Tehran.

C. Correspondence relating to mercenary activities against Cuba

20. Following up on his official mission to the Republic of Cuba in September 1999, the Special Rapporteur transmitted the following letters:

(a) Letter dated 16 June 2000 addressed to Mr. Gabriel Orellana Rojas, Minister for Foreign Affairs of Guatemala, requesting official information on the allegations concerning the use of Guatemalan territory for planning a number of attacks against tourist facilities in Havana and for the recruitment and training of several of the perpetrators of the attacks. It may be recalled that Francisco Antonio Chávez Abarca, alias Manuel González, one of the presumed masterminds, is alleged to have recruited Raúl Ernesto Cruz León and three Guatemalan citizens, Nader Kamal Musallam Baracat, María Elena González Meza de Fernández and Jazid Iván Fernández Mendoza;

(b) Letter dated 16 June 2000 addressed to Mrs. María Eugenia Brizuela de Ávila, Minister for Foreign Affairs of El Salvador, requesting official information on the use of the territory of El Salvador for the planning of a number of attacks against tourist facilities in Havana and for the recruitment and training of some of the perpetrators of the attacks. As stated in the report of the Special Rapporteur to the Commission, Luis Posada Carriles, alias Ignacio Medina, is alleged to have recruited Otto Renée Rodríguez Llerena, a citizen of El Salvador;

(c) Letter dated 6 July 2000 addressed to Ms. Madeleine Korbel Albright, Secretary of State of the United States of America, requesting official information on a number of organizations of Cuban origin formed and operating in Miami (Florida), with which several of the masterminds of the attacks against the tourist facilities in Havana are alleged to be linked. Information is requested specifically about any investigations that might have been conducted into the participation of members of these organizations in the recruitment, hiring, financing and use of mercenaries to carry out acts of sabotage and terrorism in Cuba.

21. The replies received from the Governments of El Salvador and the United States of America are set out in paragraphs 20, 21 and 22, respectively, of the Special Rapporteur's report to the General Assembly (A/55/334). On 7 December 2000, the Special Rapporteur once again wrote to the Secretary of State of the United States of America, expressing thanks for her previous reply dated 4 August 2000 and requesting any additional information uncovered by the investigation conducted by the Federal Bureau of Investigation (FBI).

22. On the same date he also wrote to the Minister for Foreign Affairs of Panama concerning the detention in that country of Luis Posada Carriles, one of the alleged masterminds behind the bomb attacks against tourist facilities in Havana. Posada Carriles entered Panama on 5 November 2000 under the name of Francisco Rodríguez Mena and a false Salvadoran

passport. He was detained, together with three other persons, on 17 November 2000 on suspicion of being involved in a plan to assassinate the President of Cuba. It is said that during his detention he confessed to participating in the attacks committed in Cuba during 1997.

23. In this connection, the Special Rapporteur reiterates the position he adopted in his previous report to the Commission and in his recent report to the General Assembly, namely, that the commission of terrorist attacks against tourist facilities in Cuba during 1997 as well as the fact that those who planned the attacks and those who carried them out were mercenaries had been proved. These acts are therefore of a criminal nature and there should be no question of impunity. It is accordingly hoped that impartial international cooperation will throw light on the conspiratorial networks which consider that their disagreements with the Government of Cuba authorize them to commit criminal acts. Impunity, in this context, cannot be countenanced.

II. MERCENARY ACTIVITIES IN AFRICA

A. General

24. The right of the African peoples to self-determination and the stability of their legitimate Governments have constituted a basic theme for the Special Rapporteur. The creation of his Office in 1987 to a great extent reflected the desire to contribute to the effective exercise of this right by the African peoples. It therefore also explains why an important aspect of his work is to follow closely the situation in African countries affected by armed conflicts or mercenary activities.

25. In some quarters it is held that, as the cold war is over and the apartheid regime in South Africa has come to an end and as the self-determination of the African peoples is no longer at risk, the Commission and in particular the Office of Special Rapporteur need no longer concern themselves with this matter. The Special Rapporteur challenges this interpretation. The end of the cold war admittedly put an end to one type of confrontation and antagonistic interests in a bipolar world. Apartheid endangered the exercise of self-determination by peoples who had recently achieved independence, such as the Angolan, Mozambican and Namibian peoples, to cite only three examples. Yet it is impossible to overlook the fact that serious situations are being created by the debilitation of States, deep-seated crises affecting governmental stability in countries of the African continent and behind-the-scenes struggles for the control of rich natural resources and oil and mineral deposits.

26. The long series of armed conflicts in Africa inevitably involving mercenaries organized in various ways offers harsh and brutal proof of the fact that the real and effective exercise of the right of many African peoples to self-determination has not been realized. Others would disagree and, viewing Africa from the standpoint of humanitarian assistance, simply refuse to face the fact that it is a continent that is still fighting for its right to self-determination and development.

27. In his initial reports, the Special Rapporteur noted that the use of mercenaries to impede the exercise of the right to self-determination could also affect non-African peoples. The use of mercenaries organized from third countries constitutes a criminal act that may have implications for several peoples. This prompted the Special Rapporteur to reinterpret his mandate in a way

that was subsequently approved by the Commission and enabled him to analyse cases and situations in which mercenaries were used outside the context of the cold war and the racist apartheid regime. Moreover, the various forms of mercenary activities and the extension of their scope revealed that they constituted a serious problem from the standpoint of the effective enjoyment of human rights. In his reports to the Commission and the General Assembly the Special Rapporteur continued to deal with the involvement of mercenaries in armed conflicts in Africa after the end of apartheid, although he also began to study the presence of mercenaries in other parts of the world.

28. Specifically, in the case of Africa, the Special Rapporteur's initial reports dealt with various aspects of the involvement of mercenaries in the conflicts taking place in Angola, Chad, Liberia, Mozambique, Namibia, Rwanda, Somalia, Sudan and, later on, in Zaire, Zambia and Zimbabwe. The Special Rapporteur also looked into the political instability - almost invariably accompanied by armed violence - experienced by Benin, Botswana, Burundi, Cameroon, the Comoros, Djibouti, Lesotho, Niger and Togo. He also studied the use of mercenaries by the racist regime of South Africa in making attempts on the lives of the leaders of the African National Congress (ANC) - one example being the assassination of Chris Hani by a Polish mercenary in April 1993 - or to destabilize political regimes which were regarded as unfriendly or smacking of a certain type of socialism.

29. The democratization of South Africa and the dismantling of the racist regime were not followed by a period of peace in the continent. On the contrary, savage armed conflicts broke out in various countries as well as a sort of continental-wide civil war which is raging in the heart of the region. The Special Rapporteur was able to confirm the involvement of mercenaries in these conflicts, some of which were brought to an end by cease-fire and peace agreements that proved to be relatively firm or lasting. Others, such as the one in Angola, continued however, and reveal the continuing involvement of mercenaries and arms traffickers, whose only thought is material gain.

30. Thus, bearing in mind that the dialectic of specific conflicts differs from one situation to another, the Special Rapporteur has consistently proposed that the Commission should adopt an overall policy designed to protect the lives, personal integrity, freedom and security of persons and ensure respect for the sovereignty of the African States and the right of their peoples freely to determine their future.

B. Angola

31. The internal armed conflict in Angola is the oldest of the African conflicts and the cause of the country's grinding poverty, despite its natural resources. It has also resulted in the death of over 500,000 Angolans and the internal displacement of at least 1 million, and the majority of the population are managing to survive only on humanitarian assistance amounting to $3 a day. In recent months landmines have caused over 50 deaths and hundreds of persons have been injured and mutilated. The main responsibility for this disaster lies with the União Nacional para a Independência Total de Angola (UNITA) which ignored the peace agreements signed in Lusaka (S/22609, annex) as a result of intensive negotiations and unilaterally resumed armed hostilities against the Government, rearming and forcibly recruiting adolescents and children. It violated the arms embargo imposed by the United Nations Security Council on

15 September 1993 (resolution 864 (1993)) and engaged in illegal barter operations, exchanging weapons for diamonds extracted in zones under its control, and especially in the north-eastern part of the country.

32. According to recent information, UNITA is paying with diamonds for the weapons which it acquires in eastern Europe and which allegedly transit through Togo. According to the same information, it is also illegally exporting diamonds extracted from mines in the northern part of the country to Belgium and purchasing weapons in Bulgaria with the proceeds. It is estimated that this illegal traffic in diamonds has provided UNITA with between US$ 3 and 4 billion, thus enabling it to strengthen its armed units and enhance its military capacity by hiring mercenaries. There are obvious flaws in the system used by the United Nations to monitor the sanctions imposed on UNITA and they must be made good. Meanwhile, the armed conflict is continuing and peace has not been achieved in Angola.

C. Sierra Leone

33. The situation is just as serious in Sierra Leone where a flawed peace agreement signed in Lomé on 7 July 1999 between the legitimate Government of President Ahmed Tejan Kabbah and the Frente Revolucionario Unido (RUF) comprised an illegal amnesty for those who had committed war crimes, crimes against humanity and acts of genocide. Even though they benefited from this illegal amnesty, RUF combatants remained under arms and continued to engage in terrorist acts, pillaging and banditry, gaining strength in certain diamond-producing areas and managing to attack the capital in May 2000. Mercenaries were also present, selling weapons and trafficking in diamonds.

34. Diamonds constitute a focal point of the conflict in Sierra Leone and mercenaries are participating in this illegal traffic. Recently, on 5 August 2000, a mercenary of Ukrainian nationality and resident in Liberia was detained in Cinisello Balsarno (Italy) and large amounts of diamonds, cocaine and weapons were found in his possession.

35. Control of the diamond mines continues to be a source of the financing of RUF activities which include the most heinous crimes committed on a mass scale and in a systematic manner during recent years in the world. The international community cannot remain indifferent to these violations of the most elementary human rights and should look into the matter of the possible complicity, by commission or omission, of those who commit such crimes. This illicit traffic in weapons and diamonds, as well as the involvement of mercenaries in such trafficking, should be carefully investigated and curbed.

36. In connection with this point, it may be noted that six major NGOs, namely, International Action against Hunger, INTERMON, Médicus Mundi Internacionalis, Médecins sans frontières and Doctors of the World, have approached the European Union and requested that the traffic in oil and diamonds should be strictly controlled. They called for the imposition of sanctions against Governments, organizations and companies which, for financial reasons, participate in this illegal trafficking as well as in illegal or shady trading in these products, thereby contributing to the continuation of armed conflicts and their attendant violations of human rights. Another NGO, namely, Partnership Africa Canada (PAC), has condemned the attitude of diamond-producing companies in respect of Sierra Leone.

37. One result of the recent visit by the United Nations Secretary-General to Sierra Leone in December 2000 was the condemnation in no uncertain terms of the illicit traffic in weapons and diamonds. Mr. Robin Cook, the Minister of Foreign Affairs of the United Kingdom, has stated that the illegal trade in diamonds had kept the conflict in Sierra Leone alive and enabled RUF to acquire large amounts of weapons. He came out in favour of setting up a government system for verifying and monitoring Sierra Leone diamonds entering the market.

38. According to the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association (IDMA), uncut diamonds of illegal origin account for only 4 per cent of the world diamond trade (US$ 7 billion in value terms). However, it must be assumed that, owing to the lack of adequate control, this percentage and amount are grossly underestimated. In any event, new methods of control are being introduced and it is to be hoped that they will yield better results than existing methods.

39. The traffic in diamonds in Africa is connected with another illegal trafficking operation that generates thousands of millions of dollars, namely, arms trafficking. Mercenaries participate in both types of traffic, acting as pilots of aircraft and helicopters, training makeshift troops in the use of weapons and transferring freight from place to place.

D. Republic of the Congo

40. The situation in the Republic of the Congo is beginning to show some signs of hope after more than three years of armed conflict. Three such signs are the peace agreement of 29 December 1999, acceptance of the mediation offered by the President of Gabon, Mr. Omar Bongo, and the opening of a national dialogue between the government party and 16 opposition parties, most of whose leaders are still in exile. The Government of President Denis Sassou Nguesso has ordered the demobilization and dissolution of the militias. The Special Rapporteur expresses his good wishes for the success of this national dialogue and the hope that, in a context of reconciliation, all isolated militia activities will cease and an impartial investigation can be made of all reports of human rights violations during the conflict.

E. Democratic Republic of the Congo

41. The armed conflict in the Democratic Republic of the Congo is continuing despite a number of attempts to negotiate peace and despite the ceasefire agreement of 10 July 1999 (S/1999/815, annex). The struggle is continuing in various parts of the country, mainly in the regions of North and South Kivu and in the south-eastern region. A meeting convened on 13 August 2000 in Lusaka in support of the ceasefire resulted in failure. Armies opposing the Government of President Laurent Désiré Kabila, such as the Congolese Rally for Democracy (RCD) and the Movement for the Liberation of Congo (MLC), are supported by troops from Angola, Namibia and Zimbabwe.

42. In this connection, the presence of mercenary combatants recruited by military security companies has been reported. The primary interest of the mercenaries continues to be focused on the Mbuji-Mayi region, the diamond capital of the province of West Kasai. According to information received by the Special Rapporteur military security companies and air cargo companies registered in the State of Nevada (United States of America), in the Channel Islands

and especially in the province of Gauteng (South Africa) and in Zimbabwe are engaged in the transport of troops, arms, munitions and diamonds. It is also reported that some of these companies participated in aerial bombardment operations. For this purpose they use Ukrainian mercenaries, pilots and air crews, among others, MIG-21 jet fighters, An-26 and An-12 Antonov transport planes and Mil Mi-24 helicopter gunships. Recently an An-12 belonging to one of these companies and loaded with explosives crashed on take-off.

F. Guinea-Bissau

43. According to information received by the Special Rapporteur, during the last week of November 2000, several dozen members of the self-styled Senegalese separatist organization Mouvement des Forces Democratiques de Casemance (MFDC) were detained in Guinea-Bissau and accused of having participated in armed actions in this country. On 24 November 2000, street fighting took place between the forces of General Ansumane Mane and the government troops of President Kumba Yala. On the basis of this information, the Special Rapporteur, in a letter dated 7 December 2000, requested the Minister for Foreign Affairs and the Communities of Guinea-Bissau for official information concerning the participation of foreigners in these incidents.

III. PRESENT SITUATION AS REGARDS MERCENARY ACTIVITIES

A. Traditional forms

44. According to certain views, mercenaries do not constitute a major danger for the enjoyment of human rights. However, a glance at the present pattern of armed conflicts, whether internal or international, and the fact that mercenaries are involved in most of them would seem to confirm the opinion held by the Office of the Special Rapporteur, namely, that mercenary activities are continuing in many parts of the world and that the presence of mercenaries is still connected with situations that affect the self-determination of peoples as well as peace, political stability, life, physical integrity, freedom and security. Mercenary activities also continue to affect the enjoyment of the human rights of peoples exposed to them.

45. At the same time there is no denying the fact that at the present time mercenary activities not only constitute an obstacle to the exercise of the right to self-determination but that they have assumed new forms and aspects which had not existed in the past. Although some of these new forms may well sport legal façades, those behind them are still mercenaries and they continue to be of an illegal nature. Confronted by these new forms, the Office of the Special Rapporteur adopted the following approach: (a) interpretation of his mandate as covering any type of mercenary activity that constituted a means of violating human rights or impeding the exercise of the right to self-determination; (b) allocation of time to the study and analysis of the new ways and forms in which mercenaries are being used; and (c) demonstrating that, regardless of its form or nature, mercenary activity in itself was unlawful and illegal and constituted a violation of the human rights of the peoples affected by it.

46. With a view to studying the use of mercenaries in the armed conflicts that affected the African States during the 1980s and in the context created by the interventionism of the apartheid regime that prevailed in South Africa, the Special Rapporteur decided to regard as mercenaries

all persons of a nationality other than that of the parties to the conflict, thereby rendering applicable article 47 of Protocol Additional I of 1997 to the Geneva Conventions of 1949. This is the article that specifies the characteristics of a mercenary and states that mercenaries may not enjoy the status of prisoners of war.

47. For the purpose of applying the provisions of article 47, the Special Rapporteur first noted the existence of organizations that recruited people to fight in an armed conflict. For example, specialized publications such as *Soldiers of Fortune* or *Cover Action* contain advertisements seeking former soldiers and persons with military training prepared to be sent to various war zones. These persons, after receiving training of an ad hoc nature, participated in hostilities, fighting for one of the parties to the conflict which paid them substantially more than combatants of similar ranks and functions in the armed forces of that party. Furthermore, they were not persons sent on official duty by a State that was not a party to the conflict. They were therefore mercenaries according to the definition given in article 47 of Protocol Additional I.

48. Conflicts such as those that occurred in the African countries, between Armenia and Azerbaijan for the region of Nagorny Karabakh, in Georgia, in Nicaragua, in the Republic of Moldova for the Dniester region or in Tajikistan attracted military personnel fitting the description given above, and they were therefore regarded as mercenaries. An important point is that under this traditional form of mercenary activities, in Angola, in the Comoros or Mozambique, mercenaries usually fought for the party that was trying to impede a people's exercise of its right to self-determination. This was also true of the mercenaries members of the Buffalo battalion and other military units that the South African racist regime sent to Angola to strengthen UNITA.

49. It may well be asked whether the extension and variation of the forms of mercenary activities has brought about the disappearance of this traditional form connected with violations of a people's exercise of its right to self-determination. The reply is certainly no. Various armed conflicts that have taken place in recent years, such as those in the territory of the former Yugoslavia, still reveal the involvement of mercenaries operating in traditional ways. Mercenaries of the traditional kind are still behind the extension of mercenary activities. Demand for persons of this type, because of their experience and presumed military prowess in combat, has kept up during recent armed conflicts. Yet at the same time new kinds of mercenaries have made their appearance, and since they do not exactly match the definition given in article 47 of Protocol Additional I, the definition itself should be re-examined. The point being made by the Special Rapporteur's office is that they are indeed mercenaries and that customary legal definitions suffer from shortcomings and limitations and fail to cover situations and activities which are of a mercenary nature.

B. Terrorism and mercenaries

50. The new ways in which mercenaries are being used reveal that at the present time they are being recruited not only to take part in armed conflicts but also to participate actively in other activities which are generally characterized by extreme violence, hatred and intolerance. The use of mercenaries in this context reflects an attempt to transfer the confrontation to the home ground of the adversary, thereby endeavouring to do him material harm and creating situations conducive to terrorism or participating in undercover operations. Mercenaries now participate in

trafficking in persons, drugs and weapons, in the commission of terrorist acts and the settling of criminal scores, as well as in organized crime such as the large-scale theft of vehicles which are then sent to African or eastern European countries. There is a demand for mercenaries to engage in such illegal acts and they are sought after because of their military know-how or weapons expertise.

51. Terrorist acts are an integral part of the violence that is designed to intimidate the population as a whole and to create a feeling of indiscriminate terror from which there is no escape regardless of their status or social or professional position. These acts are usually carried out by political militants or extremists devoid of all morality who have turned their backs on their religious, ideological or political beliefs. Mercenaries, on the other hand, are recruited to carry out operations on a larger scale or when the objective is to cause greater destruction. They are usually sought after because of their experience with the use of weapons and explosives or when it is desired to achieve "professional" efficiency in perpetrating a terrorist attack.

52. Such persons are terrorists because of the nature of the criminal act carried out, but mercenaries by virtue of their function. Specialization in the commission of crimes and the payment received are characteristic features of a large number of terrorist acts carried out during the past 30 or 40 years. For example, Illich Ramírez Sanchez, known as "Camarada Carlos", who was captured in 1994 and is at present being tried in France, has admitted that he participated in 83 assassinations, in blowing up an Air France plane in Entebbe and in the attack against OPEC ministers in 1975. He carried out these criminal and terrorist acts on the orders of organizations and States and was paid for doing so. They were carried out not for ideological reasons, because he belonged to a certain group or because of an intolerant religious attitude, but because of the money involved. These terrorist acts were those of a mercenary.

53. The attacks against the United States embassy in Beirut in 1983, against the embassy of that country and that of France in Kuwait during the same year, against the annex of the United States embassy in Beirut in 1984 and against Israel's embassy in Argentina in 1992, as well as the hijacking of Kuwait Airways aircraft in 1984 and 1988 were the work of mercenaries who were specially recruited, hired and paid to carry it out.

54. The terrorist attacks in Colombia, where an Avianca plane was blown up in the air, in Egypt, in France and in Yemen, as well as in many other countries, make it possible to make a distinction between extremists who plan terrorist acts and those who carry them out. Some were militants but others were professionals employed as mercenaries who had nothing to do with the cause in question and whose involvement in the attacks was designed to ensure their destructive efficiency. Such terrorists, working for money, are also mercenaries.

55. During his official mission to South Africa in October 1997, the Special Rapporteur pointed out that failure to sanction mercenary organizations and racist groups of the extreme right might well open the way for future terrorist attacks, and he now notes with concern that, during 2000, 21 explosive devices were set off in Cape Town, as a result of which 3 persons were killed and 130 injured. It is said that the extremist Qibla and People Against Gangsterism and Drugs (PAGAD) organizations were behind these attacks. Yet who were the actual perpetrators? Who conceived and planned these attacks? And who financed them?

56. A terrorist attack can take place in no matter what circumstances and anywhere, and not necessarily in the context of an armed conflict. However, the terrorist nature of a criminal act should not in itself exclude the possibility that it may also involve mercenary activities if it is carried out by a mercenary. The mercenary is nothing but a professional criminal. He may have specialized in blowing up aircraft, mining ports, placing car bombs and destroying buildings and be paid for doing so, regardless of the criminal consequences of his acts and the damage caused.

57. For this reason it may be said that a mercenary is not usually a scrupulous person who has second thoughts about becoming involved in a terrorist act. In the same way as he participates in armed conflicts because of his military experience and because he gets paid to do so, he is also prepared to participate in terrorist attacks if the money is right. His idea is to make use of his military prowess and sell his experience in handling explosives, carrying out commando operations and piloting aircraft or helicopters. He is not deterred by the thought of assassination, abduction or the taking of hostages. The mercenary is not an ideological extremist but he can act as a terrorist and engage in acts wreaking death and destruction if paid to do so.

58. Terrorism is at present one of the worst scourges of humanity. The terrorist shares with the mercenary a disregard for life and his efficiency in killing and destroying. Although he experiences neither the hatred nor the emotional exultation that motivates the terrorist, nothing stops him from carrying out terrorist acts if he is paid to do so. The possible involvement of mercenaries should not be dismissed in investigations of terrorist acts.

C. Criminal associations

59. Generally speaking, mercenarism is a criminal association between the person writing the contract and the one performing it who, in return for payment, agrees to participate in an armed conflict or the commission of a criminal act. The mercenary sells the expertise he has acquired and undertakes to bring about the damage desired by the person by whom he has been contracted. Any investigation conducted to determine whether the act was committed by a mercenary should therefore make a distinction between these elements as well as others based on information concerning the recruitment, hiring and training of the mercenary. Recruitment procedures, paramilitary training organizations, the use of newspaper advertisements, training centres and covert operations should all be looked into. The simultaneous use of different nationalities and passports as well as false identity documents may well provide information on the mercenary status of the person concerned. However, determination of actual mercenary status implies an analysis of the relationship between the mercenary and the person who recruited, trained and paid him. Generally speaking, indications and clues that reveal the existence of an unlawful association with intent to engage in combat or commit offences should be sought.

60. The many forms of criminal associations involving mercenaries include illicit arms trafficking, which constitutes one of the illegal activities that causes the greatest harm to mankind. Many armed conflicts occur because they have been provoked by arms merchants and others are unnecessarily prolonged by them. The investigations conducted by various United Nations bodies indicate that arms trafficking is the most widespread form of illegal operation. In the Special Rapporteur's view, the mercenary component is usually present in

illicit arms traffic operations. Mercenaries are hired as pilots, co-pilots or flight engineers for the transport of weapons, as arms salesmen in the field or as instructors in the use of the weapons and military material that have been sold, and to train troops or paramilitary groups, which in many cases comprise raw recruits, persons with little training or knowledge or ad hoc combatants.

61. The illegal arms traffic is based on payment in cash but also in kind, and recent conflicts reveal that the weapons acquired illegally are paid for with diamonds and other precious stones or with oil or drugs. This is clear from the armed conflicts in Afghanistan, Angola, Colombia and Sierra Leone. Mercenaries are involved in illegal arms trafficking which destroys peoples and hampers development and peace. The international community is not adequately protected against this scourge, which is of surprising proportions, because it has failed to develop analytical criteria and standards that can be used to monitor these activities effectively.

D. Private security and military assistance companies operating internationally

62. The Special Rapporteur has, in his previous reports, referred to the recruitment, hiring and use of mercenaries by private companies offering military security services on the international market. This trend is of recent origin and some of these companies are involved in armed conflicts and provide training to combat forces or pilots for troop transport and offer specialized technical services; on occasion they participate actively in combat situations.

63. In point of fact the private sector has traditionally contributed to the development of military science and technology and its contribution has been particularly useful in the areas of basic and applied research, technological innovation, development of new strategies and advisory and project evaluation services. However, what is held against these companies is that they enter into contracts to recruit, hire and use mercenaries and become involved in armed conflicts to such an extent that they supplant the State and its armed security forces.

64. In this respect, it is worth emphasizing what is stated in paragraph 44 of the Special Rapporteur's report to the General Assembly (A/55/334), namely, that while private companies play an important role in the area of security, there are certain limits that should not be exceeded. They should not participate actively in armed conflicts, nor recruit and hire mercenaries, much less attempt to replace the State in defending national sovereignty, preserving the right of self-determination, protecting external borders or maintaining public order.

65. Similarly, the Special Rapporteur believes that the apparent connection between an increase in mercenary activity and the well-known inadequacy of international rules in that area should be examined. Moreover, the trend towards concealing mercenarism behind modern private companies could be due to the failure of international law to predict the new operational modalities for mercenary activities. The system of international norms must be perfected to counter the development of new criminal methods. At the same time, greater rigour and precision must be achieved in concepts and definitions, avoiding generalizations and ensuring clear legal regulations; private activity in the area of security and military advice and assistance should be monitored by a specialized public international institution.

66. Examples can be found on the contemporary international scene of States debilitated by long-term armed internal conflict and of Governments that have serious difficulties in ensuring the maintenance of public order or in guaranteeing the security of their citizens. No matter how serious the situation they face, these States cannot transfer their responsibility for public order, security and protection to private entities. The international community cannot allow either the formation of private armies or the privatization of war. By definition, private companies seek the greatest possible profit and their interests are very different from those of the State. Instead, the international community should offer support and cooperation to enable States to form professional armies and security forces trained in both technical areas and in respect for the rules of international humanitarian law and human rights.

67. Consequently, clear legal norms are required which specify the areas in which private military and security companies can legitimately operate and those in which their intervention should be prohibited. Such regulations should be established at the national, regional and international levels. Domestic legislation should take into account the particular situation of each country and respect the principle of the free market and free enterprise. It should also respect above all the principles of State sovereignty, self-determination of peoples and non-intervention in the internal affairs of States.

68. The Special Rapporteur proposes that the activities of military and security companies should be regulated, limiting their activities in this field to areas that are not inherent to the very existence of States, while not actually prohibiting the existence of such companies. Any law or regulatory mechanism must prohibit the hiring and formation of armed units composed of mercenaries.

69. At the same time, and in addition to regulations at the national level, the international community should attempt to strengthen regional security mechanisms. Such arrangements are preferable because they are regulated by clear legal provisions, act in accordance with a transparent line of command and are fully responsible for any violations of international humanitarian law or human rights. They are also familiar with the territory and the peoples where they operate. It is possible that the interests of private companies, which are motivated primarily by profit, could run counter to peace and democracy and could more likely be oriented towards the perpetuation and even escalation of conflicts.

70. There is therefore no question of prohibiting what the private company may do in respect of security arrangements but rather of establishing clear and precise limits for its activities - the most important point being to prohibit the formation of private armies. The privatization of war or the establishment of paramilitary groups made up of mercenaries will only mean leaving civilian populations without protection and with little or no chance for peace and democracy, hence opening the way to domination and discrimination.

E. Problems raised by a legal definition of mercenarism

71. The Special Rapporteur has repeatedly expressed concern about gaps in the legal definition of mercenarism and failure to condemn and curb this crime effectively. Both the Commission and the General Assembly have expressed and emphasized the same concern and

have requested Governments to submit proposals with a view to arriving at a clearer legal definition of mercenarism. It is in this context that meetings of experts are to be held during 2001 in order to study and update the international legislation in force and to formulate recommendations.

72. States Members in general subscribe to the view that mercenaries are to be condemned, particularly when they act against the self-determination of peoples, State sovereignty, peace and political stability. The communications received by the Special Rapporteur from various Governments confirm the view that "mercenarism" may be applicable to serious situations that affect the political stability of States and, at times, self-determination. The Special Rapporteur considers it significant that no State has attempted to justify mercenary activities, in any way in its replies to his communications or suggested criteria to distinguish between prohibited and permitted mercenaries or between legal and illegal mercenary activities, depending on the geopolitical interests at stake. While in the past the so-called undercover operations of some Powers involved the use of mercenaries, it would seem that their use is gradually being abandoned in the present context of globalization.

73. This consensus on the condemnation of mercenary activities of various kinds is a prime factor to be considered in efforts to update the legal definition. The Special Rapporteur has noted this same consensus with regard to the use of mercenaries by private companies that offer military security on the international market. The view that their activities should be regulated and monitored does not hold that such companies should be eliminated, nor that the State should have an exclusive monopoly in matters of security; it does affirm, however, that these companies should be prevented from becoming directly involved in armed conflicts and intervening in them by hiring and forming battalions of mercenaries to take part in warfare.

74. The currently accepted meaning or use of the term mercenary is primarily focused on including under this heading professional services that are paid to recruit soldiers to intervene in an armed conflict in a country other than their own. The concept thus appears to be linked, although not exclusively, to participation in armed conflicts and attacks against the self-determination of peoples. However the use of this type of professional services extends to other illicit activities, such as trafficking in persons, whether of migrants or women, arms and munitions trafficking, drug trafficking, terrorism, acts to destabilize legitimate Governments and acts to take forcible control of valuable natural resources, as well as organized crime such as abduction or the theft of vehicles on a large scale. None of these aspects falls strictly under article 47 of Protocol Additional I to the Geneva Conventions, nor is it applicable by extension. A revision of the legal definition of mercenaries should produce a concept that is broad enough to take into account the various types of crimes involving mercenary activity. This observation is also valid in respect of the 1989 International Convention which had not yet entered into force.

75. Mercenaries have usually been soldiers who have received military training, and above all are former members of special units or commando units or parachutists and have experience in the use of sophisticated weapons. This is in particular the case of those recruited to take part in combat and to train those who are to make up battalions, columns or commando units. The mere fact that it is a Government that recruits mercenaries or hires companies that recruit mercenaries, either in its own defence or to provide reinforcements in armed conflicts, does not

make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. This point should be taken into account in an broader legal definition of mercenaries.

76. The aim of the rules of customary international and treaty law is, in essence, to combat mercenary acts in the broad sense of the buying and selling of military services that are not subject to prevailing standards of international humanitarian law applying to armed conflicts and that are likely to lead to war crimes and human rights violations. If nationals of the affected country are used, they cannot, strictly speaking, be considered mercenaries, but on the part of those recruiting them the aim of using them as mercenaries is objectively undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries. Therefore, the requirement to be a non-national of the country in which the mercenary becomes involved should also be reviewed and analysed more carefully, so as to give greater weight in the definition to the nature and purpose of the illicit act with which an agent is paid to be associated. In brief, the information summarized here, although not complete, demonstrates the need to establish a legal definition of mercenaries that covers the various ways in which they act so that mercenarism in general can be effectively sanctioned and curbed by law.

IV. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

77. Although the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly in its resolution 44/34 of 4 December 1989, nearly 11 years ago, it has still not entered into force. Nevertheless, 21 States have already either ratified or acceded to it. This means that it requires ratification or accession by only one more State to enter into force. That fact is significant in itself since it would provide mankind with yet another international instrument for the protection of human rights.

78. Despite the objections to the definition contained in article 1, the Special Rapporteur believes that the prompt entry into force of the International Convention would make it easier to improve this important instrument. It could be the starting point for efforts to address recent mercenary activities that have remained unpunished. The International Convention would facilitate preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case, procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

79. As noted above, 21 States have already completed the formal process of expressing their willingness to be bound by the International Convention. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libyan Arab Jamahiriya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention but have not yet ratified it. They are: Angola, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Republic of the Congo, Romania and Yugoslavia.

V. CONCLUSIONS

80. The Special Rapporteur would point out that no significant progress has been observed in cutting down the number of mercenary activities. They are continuing, particularly in the context of armed conflicts where some or all of the parties hire mercenaries to boost their military might and capacity to do damage.

81. The Special Rapporteur's mandate includes the follow-up to his visit to Cuba in 1999 to investigate the mercenary attacks on that country in 1997. The recent capture of one of the masterminds of these attacks who engaged in the recruitment, hiring, financing and training of mercenaries, possibly through intermediaries, offers an opportunity to elucidate the facts and to punish him for his criminal activities. However, all those outside Cuba who participated in the planning, preparation, cover-up and financing of the attacks have yet to be punished.

82. Various African countries continued to be affected by armed conflicts involving mercenaries in 2000. The interests of third parties and particularly oil, mining and diamond companies, and their control of the valuable natural resources of these countries are the causes of instability and the armed conflicts which are aggravating the suffering and poverty of their peoples.

83. The limitations and shortcomings of international norms and in particular of the current legal definition of mercenaries have been revealed by the fact that the number of mercenary activities has not diminished and that international efforts to prevent and prosecute such activities have been inadequate. The international community must, as a matter of urgency, focus on drafting a more comprehensive and effective definition in order to ensure that persons suspected of mercenary activities do not continue to evade punishment.

84. In view of the persistence of mercenary activities, the Commission on Human Rights should reaffirm its condemnation of these illegal acts because they are still being used to impede the exercise of the right of peoples to self-determination, and to undermine the sovereignty of States and the principle of non-interference in internal affairs, as well as to violate human rights and destabilize legitimate constitutional Governments. The Special Rapporteur has been able to confirm that there is a close connection between mercenary activities and violations of human rights, and particularly the right to life, physical integrity, freedom and security.

85. The Special Rapporteur has noted that private security and military assistance companies are investing increasingly in information technology, financial investigation services, military communication detection systems and electronic security systems. These companies are present in various African, American and European countries. The Special Rapporteur notes that these companies are continuing to hire mercenaries and that, more recently, pilots, aircrews and air bombardment specialists are being hired by air transport companies which, in third countries, are involved in illegal trafficking in arms and munitions, drugs, diamonds and troops. Not all these private companies recruit mercenaries, but the novelty of the offer, the efficiency promised in

situations that used to be reserved exclusively for State action and the fact that such companies are at the same time polyvalent, versatile and technologically well-equipped, could well draw them into intervening directly in armed conflicts of the countries with which they have signed contracts. The temptation, in such a scenario, of recruiting mercenaries to carry out such intervention is an inescapable reality.

86. Available data indicate that, as a result of the activities of such companies, demand for military experts, commandos, parachutists, explosives experts, airplane and helicopter pilots, cabin personnel, doctors and nurses who, in return for payment, agree to act as mercenaries has increased. However the prevailing view does not suggest that the demand for and supply of mercenaries is regulated by market forces but rather that it is the very existence of such companies that has boosted the demand. Efforts should therefore be made to ensure the international regulation and monitoring of these companies which offer military security internationally so as to prohibit in clear terms direct involvement in armed conflicts and the recruitment of mercenaries.

87. All the work done by the Office of the Special Rapporteur since its creation makes it abundantly clear that there is a direct relationship between mercenary activities and the human rights of the peoples affected by the criminal activities of mercenaries. Article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights proclaim the right of all peoples to self-determination. Mercenary activities, by impeding the exercise of the right to self-determination, constitute a violation of human rights. Mercenaries also violate human rights by committing crimes, carrying out executions, torture and other illegal acts referred to in international instruments.

88. More than 11 years after the General Assembly's adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 21 States have agreed to be bound by this instrument. Thus only one more State is needed to meet the requirement for its entry into force.

VI. RECOMMENDATIONS

89. Past and present armed conflicts in Africa reveal the various forms assumed by mercenary activities. In addition to the profit motive of mercenaries and the interests of those who hire them there is a desire to control policy or play a dominant political role that guarantees access to Africa's natural resources, and particularly diamonds and oil. It is recommended that the Commission should not only reaffirm its condemnation of mercenary activities but also adopt measures to strengthen national, regional and international mechanisms that could be used to put an end to armed conflicts and the presence of mercenaries in Africa and to protect the natural resources to which the African peoples are entitled.

90. In connection with the above, the Commission should pay particular attention to the participation of mercenaries in illegal activities, such as terrorist acts, illicit trafficking in

persons, drugs, diamonds and weapons, as well as organized crime. For that reason, it is recommended that the Commission should explicitly condemn the participation of mercenaries in such acts.

91. It is recommended that, in view of the problems involved in coming up with a legal definition of mercenaries and a lack of legislation providing for the definition, prevention and punishment of mercenary activities, the Commission should promote consultations, working meetings and solicit expert opinions with a view to obtaining, as rapidly as possible, suggestions and proposals for a better legal definition of mercenarism and proposals for updating international instruments on the subject. The Commission should also be provided with studies on the extent and regulation of private offers of military security services on the international market, on the recruitment and use of mercenaries by these companies and on their implications for the enjoyment of human rights.

92. The studies referred to in the previous paragraphs should analyse the presence of mercenaries in military security companies and their involvement in violations of human rights and international humanitarian law. They should also, in the light of the acts committed, analyse the individual responsibility of mercenaries, of the companies for which they work and of the States or belligerent insurgent or paramilitary groups by which they are hired. A particularly careful analysis should be made of the responsibility of these companies, when they act on behalf of paramilitary organizations by providing instructors, for the acts committed by these organizations.

93. In view of the important role played by the illicit diamond traffic in prolonging and financing various armed conflicts in Africa, the Commission should call for the establishment of international machinery to monitor the diamond trade. The African producer countries should set up a single export office and export diamonds on the basis of certificates of origin issued by that office. The possibility of declaring a trade embargo on diamonds from Angola, the Democratic Republic of the Congo and Sierra Leone which have no certificate of origin should be studied. The price of inaction on the part of the international community is death and mutilation.

94. In view of the tragic consequences of intervention and attacks conceived and planned outside a given country in order to undermine its stability, create economic problems or stir up armed conflicts by using mercenaries, it is recommended that the Commission should reaffirm to States Members the need to condemn and prohibit any type and form of mercenary activity.

95. It is also recommended that the Commission should state that the territory of no State should be used for recruiting, hiring or training mercenaries nor for financing mercenary operations in other countries resulting in loss of life, damage to facilities and disruption of security in general; it should also remind States that they are under an obligation to investigate, prosecute, punish and prohibit all kinds of mercenary activities, and to investigate, punish and extradite, if necessary, perpetrators or masterminds of mercenary attacks who seek refuge in the territory of a country other than the one affected.

96. It is recommended that the Commission should promote and encourage accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries so as to bring about its entry into force as rapidly as possible.

97. Lastly, it is recommended that the Commission should reaffirm its convening of meetings of experts representing various geographical regions and various legal systems to analyse traditional and new forms of mercenary activities and the problems posed by gaps and shortcomings in the existing legal definition, with a view to holding such meetings in the course of the year 2001.